

of her co-defendant, Moses E. Videz.¹ Davis has next contended that the prosecutor improperly commented on her decision to not testify in her defense at trial.

Because these same claims were presented to, and denied by, the Oklahoma Court of Criminal Appeals ("OCCA") on direct appeal, Davis v. State, No. F-2008-242 (Okla. Crim. October 28, 2009), this Court may only grant habeas relief if the OCCA's adjudication of these grounds "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the [United States] Supreme Court . . .," 28 U.S.C. § 2254(d)(1), or "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." Id. § 2254(d)(2).

Upon de novo review of the record and after applying the foregoing standards, the Court concurs with Magistrate Judge Argo's suggested disposition of this matter. The OCCA's rejection of Davis' claims regarding severance and improper prosecutorial comments was not contrary to, and did not involve an unreasonable application of, clearly-established Supreme Court precedent.

Accordingly, the Court finds that Davis is not entitled to the relief she has requested and

(1) ADOPTS the Report and Recommendation [Doc. 10] issued on October 27, 2011;

(2) DENIES Davis' Petition filed on January 26, 2011; and

¹Co-defendant Videz was also charged with first degree (child abuse) murder and child neglect. The jury acquitted Videz of the former charge, but convicted him on the latter charge. Videz was sentenced to a term of imprisonment of five (5) years.

(3) ORDERS that judgment in favor of respondent Millicent Newton-Embry, Warden, issue forthwith.

ENTERED this 6th day of December, 2011.



LEE R. WEST
UNITED STATES DISTRICT JUDGE